Chapter One
Criminal Justice System Overview

Table of Contents

Criminal Justice System Agencies

A. Arresting Agencies 3

B. Prosecution 3
1. County Attorney 3
2. City Prosecutors 3

C. Public Defender 4

D. Courts 4
1. City Court 4
2. Municipal Court 4
3. Justice Court 5
4. District Court 6

E. Probation 7

F. Pre-Trial Services 7

G. Victim Services 8

H. Sheriff's Community Work Program 9

Defendant Processing

A. Arrest And Booking..... 12

B. Initial Appearance..... 13

C. Bail..... 15
1. Federal.....15
2. Montana.....16

D. Preliminary Examination..... 19

E. Indictment..... 20

F. Arraignment..... 21

G. Trial..... 21

H. Sentencing..... 22

I. Post-Sentencing..... 24

J. Victim Rights..... 25

Chapter One
Criminal Justice System Overview

Criminal Justice System Agencies

A. Arresting Agencies

The police agencies in Gallatin County have the responsibility of arresting defendants and booking them directly into custody. If it is a warrentless arrest, the arresting officer lodges the charges that are later reviewed by the specific prosecutor.

The primary police agencies within Gallatin County that book defendants into the Detention Facility are as follows:

- Gallatin County Sheriff
- Bozeman Police Department
- Belgrade Police Department
- Montana State University Police Department
- Montana Highway Patrol

B. Prosecution

1. County Attorney

The County Attorney has the responsibility of prosecuting offenders charged with criminal offenses. There are three deputy county attorneys assigned to prosecute felony offenses and two for misdemeanor offenses. There is an additional deputy assigned to prosecute juvenile offenses.

2. City Prosecutors

The city of Bozeman has a contract city prosecutor for municipal court. Additional support is provided by the City Attorney's Office. Each of

the city courts, Belgrade, West Yellowstone, Manhattan, and Three Forks, has contract prosecutors to handle the respective courts.

C. Public Defender

Gallatin County created a public defender office in October 2003. The office has a director and 4 deputy public defenders and has the responsibility for handling indigent defense for all of the courts in the county. Partial funding comes from the state for felony cases and each of the cities participates in a funding formula that represents their respective portion of the criminal caseload.

D. Courts

The state of Montana does not have a unified court system. The state assumed funding of the entire operation of the district court in 2001. The county justice, city, and municipal courts are all independent and operated by their respective jurisdiction.

1. City Court

Each city in the state of Montana has a city court.

> **3-11-101. City court established.** A city court is established in each city or town. A city judge shall establish regular sessions of the court. On judicial days, the court must be open for all business, civil and criminal. On nonjudicial days, as defined in 3-1-302 , the court may transact criminal business only.

City courts are operated by the cities of Belgrade, West Yellowstone, Manhattan, and Three Forks. The courts are not courts of record and appeals to the district court are de novo.

2. Municipal Court

Cities larger than 4,000 population can elect to establish a municipal court.

3-6-101. Establishment of court. (1) A city with a population of 4,000 or more, according to the last federal census, may have a court, known as the municipal court of the city of (designating the name of the city) of the state of Montana. The court must be a court of record. The municipal court shall assume continuing jurisdiction over all pending city court cases in the city in which the municipal court is established.

(2) A city may have a municipal court only if the governing body of the city elects by a two-thirds majority vote to adopt the provisions of this chapter by ordinance and, in the ordinance, provides the manner in which and time when the municipal court is to be established and is to assume continuing jurisdiction over all pending city court cases.

The city of Bozeman has established a municipal court. It is a court of record and any appeals are made to the district court from the record.

3. Justice Court

Each county in the state of Montana has a justice court.

3-10-101. Number and location of justices' courts -- authorization to combine with city court -- justice's court established as court of record. (1) There must be at least one justice's court in each county of the state, which must be located at the county seat. The board of county commissioners shall designate the number of justices in each justice's court.

(2) The board of county commissioners of each county of the state may establish:

(a) one additional justice's court located anywhere in the county; and

(b) one additional justice's court located in each city having a population of over 5,000, as provided in subsection (3).

(3) A city having a population of over 5,000 may, by resolution, request the board of county commissioners to constitute a justice's court in the city. A justice's court must be established in the city if the board of county commissioners approves the request by resolution.

(4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the board of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202, and for proportionate reimbursement for the use of facilities.

(5) A county may establish the justice's court as a court of record. If the justice's court is established as a court of record, it must be known as a justice's court established as a court of record and, in addition to the

provisions of this chapter, is also subject to the provisions of 3-10-115 through 3-10-117. The court's proceedings must be recorded by electronic recording or stenographic transcription and all papers filed in a proceeding must be included in the record. A justice's court established as a court of record may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137.

Gallatin County's justice court is not a court of record. It has two judges, one of which is a three-fourths time judge. The justice court is not a court of record and appeals to the district court are de novo.

4. District Court

The district court is the court of general jurisdiction. Gallatin County is the exclusive county in the 18th judicial district.

3-5-302. Original jurisdiction. (1) Except as provided in subsection (6), the district court has original jurisdiction in:
(a) all criminal cases amounting to felony;
(b) all civil and probate matters;
(c) all cases at law and in equity;
(d) all cases of misdemeanor not otherwise provided for; and
(e) all such special actions and proceedings as are not otherwise provided for.
(2) The district court has concurrent original jurisdiction with the justice's court in the following criminal cases amounting to misdemeanor:
(a) misdemeanors arising at the same time as and out of the same transaction as a felony or misdemeanor offense charged in district court;
(b) misdemeanors resulting from the reduction of a felony or misdemeanor offense charged in the district court; and
(c) misdemeanors resulting from a finding of a lesser included offense in a felony or misdemeanor case tried in district court.
(3) The district court has exclusive original jurisdiction in all civil actions that might result in a judgment against the state for the payment of money.
(4) The district court has the power of naturalization and of issuing papers therefor in all cases where it is authorized to do so by the laws of the United States.
(5) The district court and its judges have power to issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in their respective districts. Injunctions and writs of prohibition and habeas corpus may be issued and served on legal holidays and nonjudicial days.

(6) (a) Except as provided in subsection (6)(b), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-308 , and only for the following causes:

(i) violation of the law relating to qualifications for inclusion on the ballot;

(ii) constitutional defect in the substance of a proposed ballot issue; or

(iii) illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(b) A contest of a ballot issue based on subsection (6)(a)(i) or (6)(a)(iii) may be brought at any time after discovery of illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(c) Nothing in subsection (6) limits the right to challenge a measure enacted by a vote of the people.

There are two judges assigned to the district court. Due to the illness and recent death of one of the judges, visiting judges from throughout the state have been filling in for one of the positions. The court has an administrator who oversees and coordinates the operation of the court and related agencies.

E. Probation

The state Department of Corrections handles felony probation in Montana. The state office handles probation and parole for both adults and juveniles. Gallatin County is part of Region 2 along with 10 other counties. There are 12 officers and a supervisor assigned to Gallatin County. Nine of the officers are assigned to general supervision including the responsibility of completing pre-sentence investigations, 2 are assigned to Intensive Supervision, and until recently there was a dedicated staffer for drug court.

F. Pre-Trial Services

In early 2003, the county established a Pre-Trial Services program. The program currently has one staff person who has the responsibility of interviewing, verifying the information, providing reports to the court, and

supervising assigned offenders. The program operates under the supervision of the district court administrator.

G. Victim Services

Gallatin County's Victim Services Office was established in 1993. In 1995, victim rights were significantly strengthened in Montana and the program grew to its current staffing level, with two full-time positions. In 2000, The Victim Services Center was opened. This Center, located in the Law and Justice Building, co-locates the three programs that provide services to victims in Gallatin County: Victim Services, the Network's Legal Advocate, and the Guardian ad litem program.

The Network's Legal Advocacy service is offered to victims of domestic violence, sexual assault, and stalking. Assistance is provided with securing orders of protection and with other civil court procedures.

The Guardian ad litem Program provides training and oversight for forty volunteers, appointed by the court to represent children in child abuse and neglect proceedings.

The Victim Services Program is a branch of the County Attorney's office. It also receives direction form a Project Team that meets quarterly to address funding and program issues. The team has, at any time, 12-16 members who include: the county attorney, a county commissioner, a city commissioner, a law enforcement representative, a representative of the domestic violence Network, and a member of a Montana State University's VOICES Program.

The Victim Services Program provides crisis counseling, information and referrals, court accompaniment, and assistance in seeking state compensation and victim notification.

The majority of individuals assisted are victims of domestic violence, assault and child sexual abuse. In 2003 the program served 719 victims (data through third week in December); of these, 228 were victims of domestic violence, 174 were victims of assault, and 113 were victims of child abuse. Approximately 75 % of the victims served were females.

Over the last several years, the program has experienced increases in the number of assault victims, and is seeing more serious injuries and more cases with multiple victims.

The program is funded by federal grants, from a county surcharge on offenders, and from a contribution from the City of Bozeman.

H. Sheriff's Community Work Program

The Gallatin County Sheriff's Work Program was established in 1991. The development of this program was made possible by legislation, passed in 1989 that gave jurisdictions a sentence alternative to jail.

This legislation allows counties to operate county jail work programs for inmates convicted of nonviolent offenses without actual confinement in the local jail (MCA 7-32-225).

County work programs must be authorized by the board of county commissioners and supervised by the county sheriff (MCA 7-32-2226).

A person participating in a county work program may not be physically confined in the county jail during the course of their participation, and the person may not be required to work in excess of 8 hours each day. Each calendar day in which a person has participated in a county work program is considered one day of incarceration for the purpose of serving a sentence of imprisonment.

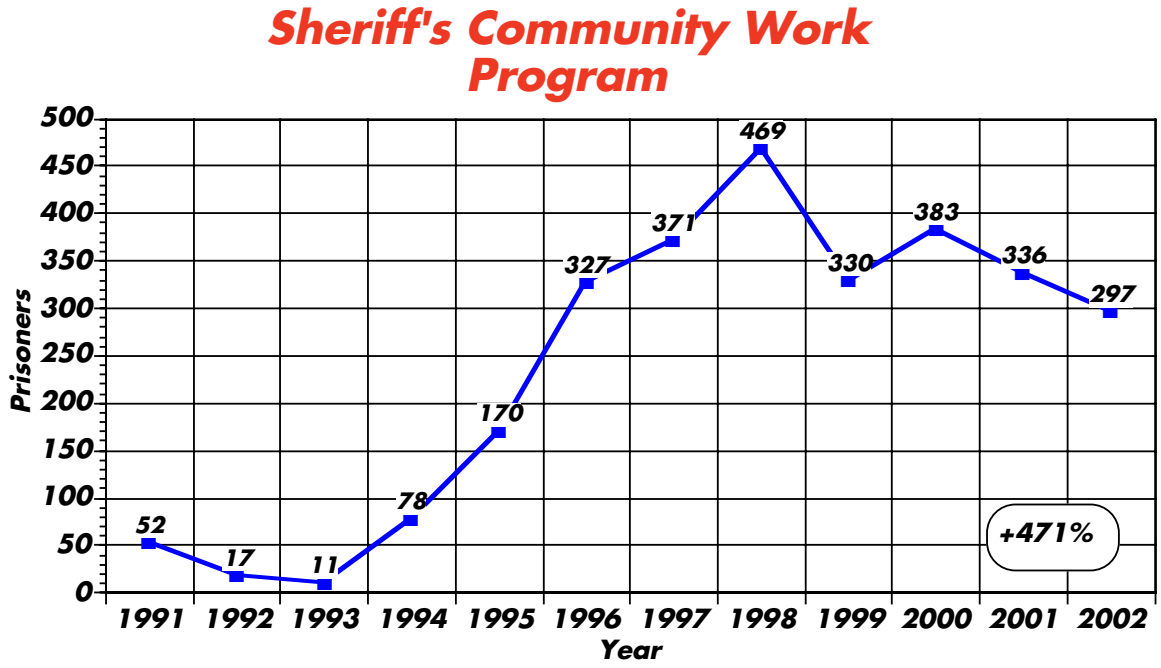
A person participating in the program is under official detention, and as such, failure to appear for work at a time and place scheduled for participation constitutes the offense of escape.

The eligibility criteria are broad. A person would be ineligible to participate in a work crew program only if: they are confined in jail on a civil matter; are serving a sentence for any offense in which violence is an element; or are prohibited from participation by the sentencing judge (MCA 7-32-2227).

Although the original legislation permitted this alternative program for persons convicted of drunk- driving offenses, it was later modified to exclude their participation.

The Sheriff operates a program that, on any given day, has 8-10 persons working at various tasks. These include: maintenance work at the Law and Justice Building, physical labor at the Fairgrounds, and work at local Rest-homes.

The following graphic shows the number of prisoners who participated in the Sheriff's Community Work Program from 1991 through 2002.



In 1991, there were 52 prisoners assigned to the program. The number of participants peaked in 1998 when there were 469. In 2002, there were 297 participants, a 471 percent increase over the period.

Defendant Processing

Montana Code guides the manner is which cases are processed by defining the limits of authority, by outlining required procedures and protocol, and by setting certain timeframes for case review and resolution.

A. Arrest And Booking

An arrest is allowed with a warrant or on belief that a warrant has been issued.

46-6-210. Arrest by peace officer

A peace officer may arrest a person when the officer has a warrant commanding that the person be arrested or when the officer believes on reasonable grounds: (1) that a warrant for the person's arrest has been issued in this state, except that unless otherwise provided by law, a warrant for violation of a city ordinance may not be acted upon unless the person is located within the limits of the city in which the violation is alleged to have occurred; or (2) that a felony warrant for the person's arrest has been issued in another jurisdiction.

Arrests without a warrant are permitted if certain conditions are met.

46-6-311. Basis for arrest without warrant

(1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

Arrest is the preferred response in partner or family member assault cases.

46.5-311

(2) (a) The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim. (b) When a peace officer responds to a partner or family member assault complaint and if it appears that the parties were involved in mutual aggression, the officer shall evaluate the situation to determine the primary aggressor. If, based on the officer's evaluation, the officer

determines that one person is the primary aggressor the officer may arrest only that person.

Identification of the primary aggressor is made by considering specific criteria.

46.5-311

A determination of who the primary aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor: (i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer; (ii) the relative severity of injuries received by each person; (iii) whether an act of or threat of violence was taken in self-defense; (iv) the relative sizes and apparent strength of each person; (v) the apparent fear or lack of fear

A peace officer must file a written report in all domestic violence responses.

46-6-601 Written report when no arrest made in domestic violence situation

When a peace officer is called to the scene of a reported incident of domestic violence but does not make an arrest, the peace officer shall file a written report with the officer commanding the law enforcement agency employing the peace officer, setting forth the reason or reasons for the decision.

The victim of a domestic assault shall be advised of community services and legal rights.

46-6-602. Notice of rights to victim in partner or family member assault

Whenever a peace officer arrests a person for partner or family member assault, as defined in 1.45-5-206 or responds to a call in which partner or family member assault is suspected, the officer, outside the presence of the offender, shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of any legal rights and remedies available.

B. Initial Appearance

The initial appearance must take place without delay.

46-7-101. Appearance of arrested person

(1) A person arrested, whether with or without a warrant, must be taken without unnecessary delay before the nearest and most accessible judge for an initial appearance. (2) A defendant's initial appearance before a judge may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other and so that the defendant and his counsel, if any, can communicate privately. A judge may order a defendant's physical appearance in court for an initial appearance hearing.

At initial appearance the defendant shall be informed of the charges and his rights.

46-7-102. Duty of court

(1) The judge shall inform the defendant: (a) of the charge or charges against the defendant; (b) of the defendant's right to counsel; (c) of the defendant's right to have counsel assigned by a court of record in accordance with the provisions of 46-8-101; (d) of the general circumstances under which the defendant may obtain pretrial release; (e) of the defendant's right to refuse to make a statement and the fact that any statement made by the defendant may be offered in evidence at the defendant's trial; and (f) of the defendant's right to a judicial determination of whether probable cause exists if the charge is made by a complaint alleging the commission of a felony. (2) The judge shall admit the defendant to bail as provided by law.

The defendant shall be informed of his right to counsel.

46-8-101. Right to counsel

(1) During the initial appearance before the court, every defendant must be informed of the right to have counsel, and must be asked if the aid of counsel is desired. (2) If the defendant desires counsel, is unable to employ counsel, and is entitled to have counsel assigned, the court shall assign counsel to the defendant without unnecessary delay. (3) The defendant, if unable to employ counsel, is entitled to have counsel assigned if: (a) the offense charged is a felony; (b) the offense charged is a misdemeanor and the court desires to retain imprisonment as a sentencing option; or (c) the interests of justice would be served by assignment.

The defendant may waive the right to counsel.

46-8-102. Waiver of counsel

A defendant may waive the right to counsel when the court ascertains that the

waiver is made knowingly, voluntarily, and intelligently

The court shall make a determination of indigence.

46-8-111. Eligibility for court-appointed counsel

(1) The court shall make a determination of indigence. (2) In applying for court-appointed counsel, a defendant shall submit a sworn financial statement demonstrating financial inability to obtain legal representation without substantial hardship in providing for personal or family necessities. The statement is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution

C. Bail

Procedures have been established at both the federal and state level to govern the setting of bail.

1. Federal

The issue of financial consideration in effecting pre-trial release became a focus of debate in the 1960's. The concern arose that an over-reliance on financial criteria discriminated against poor defendants, and resulted in decisions that were inequitable. This led to the efforts by the Vera Institute to demonstrate that non-financial considerations, such as the community ties of the defendant could be used to make effective release decisions, and eventually resulted in the development of a risk assessment instrument to inform decision-making.

A presumption favoring recognizance release and unsecured bond was first set down (in guideline form) by the Federal Bail Reform Act of 1966. The Act also required federal judicial officers to consider a defendant's "community ties" when making release decisions in non-capital cases, introduced the concept of conditional release, and authorized an option that allowed the defendant to deposit 10 percent bail with the court. For those cases approved for pre-trial release, the Federal Bail Reform Act instructed the judicial officer to take the least restrictive measures to assure appearance. The 1966 Act stipulated that secured bond was to be used only for high-risk defendants. This Federal reform, although not binding in state systems, had a tremendous influence on the evolution of state laws pertaining to pre-trial release.

In 1968, the American Bar Association published the first standards on pre-trial release.

> *" Pre-trial incarceration should never be resorted to without first exhausting the possibilities of adequate supervision for defendants on conditional release. Conversely, it is equally indefensible to release criminal defendants who might commit new, and in particular dangerous offenses pending trial, without also taking reasonable steps to protect the community against that danger."* (ABA, 1985)

In 1970, in response to rising concerns over serious crime, the District of Columbia amended the Bail Reform Act to include considerations of community safety, in addition to the risk of flight, in making release decisions. This reform also provided for "preventive detention" of defendants considered to pose a significant threat to the community. The Comprehensive Crime Control Act, passed by Congress in 1984, formalized the use of preventive detention and the weighting of community safety, as well as risk, in making release decisions. In 1987, the United States Supreme Court upheld the use of preventive detention as defined in the 1984 Act.

The evolution of pre-trial release law has resulted in enshrining the notion of a presumption of release and the use of the least restrictive release option to ensure appearance in court and protect the public.

2. Montana

There is a *presumption for bail in all cases except capital offenses.*

46-9-102. Bail-able offenses

(1) All persons shall be bailable before conviction, except when death is a possible punishment for the offense charged and the proof is evident or the presumption great that the person is guilty of the offense charged. (2) On the hearing of an application for admission to bail made before or after indictment or information for a capital offense, the burden of showing that the proof is evident or the presumption great that the defendant is guilty of the offense is on the state.

Defendants shall be released with reasonable conditions, except those with capital cases.

46-9-106. Release or detention of defendant pending trial

Before a verdict has been rendered, the court shall: (1) authorize the release of the defendant upon reasonable conditions that ensure the appearance of the defendant and protect the safety of the community or of any person; or (2) detain the defendant when there is probable cause to believe that the defendant committed an offense for which death is a possible punishment and adequate safeguards are not available to ensure the defendant's appearance and the safety of the community.

Bail shall be reasonable and sufficient to ensure appearance.

46-9-301. Determining the amount of bail

In all cases that bail is determined to be necessary, bail must be reasonable in amount and the amount shall be: (1) sufficient to ensure the presence of the defendant in a pending criminal proceeding; (2) sufficient to assure compliance with the conditions set forth in the bail; (3) sufficient to protect any person from bodily injury; (4) not oppressive; (5) commensurate with the nature of the offense charged; (6) considerate of the financial ability of the accused; (7) considerate of the defendant's prior record; (8) considerate of the length of time the defendant has resided in the community and of his ties to the community; (9) considerate of the defendant's family relationships and ties; (10) considerate of the defendant's

employment status; and (11) sufficient to include the charge imposed in **1.46-18-236**

The release decision is to be guided by specific risk criteria.

46-9-109. Release or detention hearing

(1) The release or detention of the defendant must be determined immediately upon the defendant's initial appearance. (2) In determining whether the defendant should be released or detained, the court shall take into account the available information concerning: (a) the nature and circumstances of the offense charged, including whether the offense involved the use of force or violence; (b) the weight of the evidence against the defendant; (c) the history and characteristics of the defendant, including: (i) the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to alcohol or drug abuse, criminal history, and record concerning the appearance at court proceedings; and (ii) whether at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentencing for an offense; (d) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; and (e) the property available as collateral for the defendant's release to determine if it will reasonably ensure the appearance of the defendant as required.

A bail hearing may be requested to determine the appropriateness of bail.

46-9-109. Release or detention

(3) Upon the motion of any party or the court, a hearing may be held to determine whether bail is established in the appropriate amount or whether any other condition or restriction upon the defendant's release

will reasonably ensure the appearance of the defendant and the safety of any person or the community.

Certain cases shall not be released prior to appearance before a judge.

46-9-302. Bail schedule -- acceptance by peace officer

(1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is: (a) any assault on a partner or family member, as partner or family member is defined in 1) 45-5-206; (b) stalking, as defined in 45-5-220; or (c) violation of an order of protection, as defined in 45-5-626.

Those waiting sentencing, appeal, or revocation hearings shall be assessed for flight and safety risk.

46-9-107. Release or detention pending appeal -- revocation -- sentencing hearing

A person intending to appeal from a judgment imposing a fine only or from any judgment rendered by a justice's court or city court must be admitted to bail. The court shall order the detention of a defendant found guilty of an offense who is awaiting imposition or execution of sentence or a revocation hearing or who has filed an appeal unless the court finds that, if released, the defendant is not likely to flee or pose a danger to the safety of any person or the community.

The court may impose conditions of release to ensure appearance and community safety.

46-9-108. Conditions upon defendant's release

(1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions: (a) the defendant may not commit an offense during the period of release; (b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community; (c) the defendant shall maintain employment or, if unemployed, actively seek employment; (d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel; (e) the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense; (f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other

appropriate individual; (g) the defendant shall comply with a specified curfew; (h) the defendant may not possess a firearm, destructive device, or other dangerous weapon; (i) the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription; (j) the defendant shall furnish bail in accordance with **1) 46-9-401**; or (k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

The court shall impose the least restrictive conditions necessary.

46-9-108

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party

D. Preliminary Examination

A preliminary examination shall be conducted unless certain conditions are met.

46-10-105. Preliminary examination

After the initial appearance, in all cases in which the charge is triable in district court, the justice's court shall, within a reasonable time, hold a preliminary examination unless: (1) the defendant waives a preliminary examination; (2) the district court has granted leave to file an information; (3) an indictment has been returned; or (4) the case is triable in justice's court.

The defendant may not enter a plea at the preliminary hearing.

46-10-202. Presentation of evidence

(1) The defendant may not enter a plea. The judge shall hear the evidence without unnecessary delay. All witnesses must be examined in the presence of the defendant. The defendant may cross-examine witnesses against the defendant and may introduce evidence in the defendant's own behalf. For purposes of this section, a preliminary examination conducted by the use of two-way electronic audio-video communication that allows all of the participants to be observed and heard by all other participants and that allows the defendant to cross-examine witnesses is considered to

be an examination of a witness in the presence of the defendant. Two-way electronic audio-video communication may not be used unless the defendant's counsel is physically present with the defendant, unless this requirement is waived by the defendant

E. Indictment

All district court cases must be prosecuted by indictment or information.

46-11-102. Required methods of prosecution

(1) All prosecutions of offenses charged in a district court must be by indictment or information. (2) All other prosecutions of offenses must be by complaint.

An information must be filed within 30 days of a preliminary hearing.

46-11-203. Time for filing an Information

(1) After a finding of probable cause following a preliminary examination or waiver of a preliminary examination or after leave of court has been granted, the prosecutor shall file within 30 days in the proper district court an information charging the defendant with the offense or any other offense supported by probable cause. (2) Unless good cause to the contrary is shown, the court shall dismiss the prosecution if an information is not filed within 30 days as required in subsection (1).

An information may be amended up to five days prior to trial.

46-11-205. Amending Information (1) The court may allow an information to be amended in matters of substance at any time, but not less than 5 days before trial, provided that a motion is filed in a timely manner, states the nature of the proposed amendment, and is accompanied by an affidavit stating facts that show the existence of probable cause to support the charge as amended. A copy of the proposed amended information must be included with the motion to amend the information. (2) If the court grants leave to amend the information, the defendant must be arraigned on the amended information without unreasonable delay and must be given a reasonable period of time to prepare for trial on the amended information. (3) The court may permit an information to be amended as to form at any time before a verdict or finding is issued if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

The district judge may summon a grand jury to decide on an indictment.

> **46-11-301. Summoning the grand jury.** (1) A grand jury may only be drawn and summoned when the district judge, in his discretion, considers a grand jury to be in the public interest and orders the grand jury to be drawn or summoned. The composition and drawing of a grand jury must be in accordance with the provisions of Title 3, chapter 15, part 6. (2) The district judge may direct the selection of one or more alternate jurors, who shall sit as regular jurors before an indictment is found or a grand jury investigation is concluded. A member of the jury who becomes unable to perform the juror's duty may be replaced by an alternate.

Eight jurors must concur to find an indictment.

> **46-11-331. Finding an indictment.** (1) The grand jury shall find an indictment when all the evidence before it taken together would in its judgment warrant a conviction by a trial jury. An indictment may be found only upon the concurrence of at least eight grand jurors. (2) If a complaint or information is pending against the defendant and eight jurors do not concur in finding an indictment, the foreman shall report the decision to the district court judge.

Upon the finding of an indictment an arrest warrant or summons shall be issued.

> **46-11-332. Presenting the indictment.** (1) An indictment, when found by the grand jury, must be signed by and presented by the foreman to the district court in the presence of the grand jury and must be filed with the clerk. The district court shall then issue an arrest warrant or summons for the defendant. (2) If a complaint or information is pending against the defendant and eight jurors do not concur in finding an indictment, the foreman shall report the decision to the district court judge.

F. Arraignment

The defendant charged with a felony shall be present at arraignment and all other hearings.

> **46-16-121 Felony offenses** (1) Except as otherwise provided in Title 46, the defendant in all cases in which a felony is charged must be present at the initial appearance, arraignment, entry of plea, preliminary examination, trial, and sentencing or when otherwise required by the court.

G. Trial

In-custody defendants are given priority for scheduling.

> **46-16-101. Who given precedence on calendar** Prosecutions against defendants held in custody must be disposed of in advance of

prosecutions against defendants on bail unless for good cause the court shall direct an action to be tried out of its order.

Persons charged with a felony have a right to a trial by jury.

46-16-110. Right to jury trial -- waiver

(1) The parties in a felony case have a right to trial by a jury of 12 persons.
(2) The parties may agree in writing at any time before the verdict, with the approval of the court, that the jury shall consist of any number less than that to which they are entitled.
(3) Upon written consent of the parties, a trial by jury may be waived.

*The defendant shall be give a reasonable time to prepare for trial. (***46-16-106)**

H. Sentencing

If a defendant has been convicted of a sexual offense, or is facing one year or more incarceration, a pr-sentence investigation shall be ordered unless the court finds it unnecessary.

46-18-111. Pre-sentence investigation -- when required. (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a pre-sentence investigation and report. The district court shall consider the pre-sentence investigation report prior to sentencing. If the defendant was convicted of an offense [for one of the following: sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, incest, sexual abuse of a child, or ritual abuse of a minor] the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs… (2) The court shall order a pre-sentence report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written pre-sentence investigation report by a probation and parole officer is presented to and considered by the district court.

In sentencing a nonviolent felony offender, the sentencing judge shall first consider alternatives to imprisonment (46-18-225).

A minimum mandatory sentence is set for offenders designated as persistent felons.

46-18-502. Sentencing of persistent felony offender

… A persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both, if the offender was 21 years of age or older at the time of the commission of the present offense, [and]… :
(a) the offender was a persistent felony offender, as defined in 46-18-501, at the time of the offender's previous felony conviction;
(b) less than 5 years have elapsed between the commission of the present offense and:
(i) the previous felony conviction; or
(ii) the offender's release on parole, from prison, or from other commitment imposed as a result of the previous felony conviction; and
(c) the offender was 21 years of age or older at the time of the commission of the present offense.

Persons sentenced to county jail may, with the proper authority, be granted release during the day to pursue employment.

46-18-701. Limited release during employment hours. (1) A court, after having sentenced a person to confinement in a county jail, may, in its discretion, upon request of the county attorney and sheriff of the county and with the consent of the convicted person, order that any part of the imprisonment imposed be served in confinement with limited release during the hours or periods the convicted person is actually employed.
(2) Upon the issuance of an order for limited release under this part, the sheriff shall arrange for the convicted person to continue the person's regular employment without interruption insofar as is reasonably possible. However, the prisoner must be confined in the county jail during the hours when the prisoner is not employed.

The court may, upon request of the sheriff and the county attorney, in its discretion, reduce the sentence of the prisoner up to one-fourth of the full term (46-18-704).

With the exception of persons held under a detainer or warrant (46-18-1004), defendants may petition for an order allowing house arrest in lieu of incarceration.

46-18-1002. Home arrest -- petition -- agreement. (1) An offender may petition a sentencing court for an order directing that all or a portion of a sentence of imprisonment be served under conditions of home arrest. The term of home arrest may not exceed 6 months. Petitions may be considered and ruled upon by the sentencing court prior to and throughout the term of the offender's sentence.

I. Post-Sentencing

A probation and parole officer may initiate an informal violation hearing, to be conducted by a hearings officer designated by the department.

46-23-1015. Informal probation violation intervention hearing

(3) If the hearings officer determines by a preponderance of the evidence that the probationer has violated a condition of probation, the hearings officer may order the probationer to serve up to 30 days in a county detention center, with credit for time served since the time of arrest, and order the probationer to pay the costs of incarceration. The department shall pay the incarceration costs not paid by the probationer.

If a probationer has violated a condition of supervision, a court may issue a warrant for the arrest of the probationer or a county attorney may issue a notice to appear.

46-23-1012. Arrest when violations of probation alleged

(2)... A written statement or oral authorization delivered with the probationer by the arresting officer to the official in charge of a detention center is sufficient warrant for the detention of the probationer if the probation and parole officer delivers the written statement within 12 hours of the probationer's arrest. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.
(3) A probation and parole officer may authorize a detention center to hold a probationer arrested under this section without bail for 72 hours.

Within 72 hours following the probationer's detention, the probation and parole officer shall release the probationer, hold an intervention hearing, or arrange for the magistrate to set bail.

46-23-1012

(4) If the probationer is detained and bond is set, the probation and parole officer shall file a report of violation within 10 days of the arrest of the probationer.
(5) After the probation and parole officer files a report of violation, the court may proceed with revocation of probation in the manner provided in 46-18-203.

J. Victim Rights

Law enforcement personnel shall give written information to the victim about crime victim compensation, the role of the victim in the criminal justice process, community treatment and support services and the name of the law enforcement officer and prosecuting attorney assigned to the case. (46-24-201).

46-24-203. Prompt notification to victims and witnesses of certain offenses. (1) A person described in subsection (2) who provides the appropriate official with a current address and telephone number must receive prompt advance notification, if possible, of proceedings relating to the person's case, including:

(a) the arrest of an accused;

(b) the release of the accused pending judicial proceedings;

(c) the crime with which the accused has been charged, including an explanation of the elements of the offense when necessary to an understanding of the nature of the crime;

(d) proceedings in the prosecution of the accused, including entry of a plea of guilty or nolo contendere and the setting of a trial date;

(e) if the accused is convicted or pleads guilty or nolo contendere, the function of a pre-sentence report; the name, office address, and telephone number of the person preparing the report; and the convicted person's right of access to the report, as well as the victim's right under 46-18-115 to present a statement in writing or orally at the sentencing proceeding and the convicted person's right to be present at the sentencing proceeding and to have access to the victim's statement;

(f) the date, time, and place of any sentencing hearing, the sentence imposed, and the term of imprisonment, if imposed; and

(g) the right under 46-24-212 of a victim of a felony offense to receive information from the department of corrections concerning the convicted person's incarceration.

The victim has the right to be present during any trial or hearing that pertains to the offense (46-24-106).

46-24-104. Consultation with victim of certain offenses. As soon as possible prior to disposition of the case, the prosecuting attorney in a criminal case shall consult with the victim of a felony offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim or, in the case of a minor child victim or homicide victim, with the family of the victim in order to obtain the views of the victim or the victim's family regarding the disposition of the case, including:

(1) dismissal of the case;

(2) release of the accused pending judicial proceedings;

(3) plea negotiations; and

(4) pretrial diversion of the case from the judicial process.